

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

WYATT TONE and JILL TONE,
husband and wife, and the
marital community comprised
thereof,

Defendants.

No. CV-08-5034-FVS

JUDGMENT UPON ORDER OF DEFAULT

THIS MATTER came before the Court on Plaintiff's August 28, 2008, application for judgment upon order of default. (Ct. Rec. 10). Assistant United States Attorney Pamela J. DeRusha, represents the United States; Defendants have not made an appearance in this action. The matter was noted for hearing, without oral argument, on September 2, 2008.

BACKGROUND

In August 1974, the United States, acting by and through the Bonneville Power Administration ("BPA"), acquired by deed from

1 Burlington Northern, Inc., Defendants' predecessors-in-interest, an
2 easement 50 feet wide, a portion of which lies across Defendants'
3 land. Compl. ¶ 5. Defendants purchased property subject to the
4 transmission line easement and right-of-way in early 2004. Compl. ¶
5 9. BPA has subsequently agreed to sell the Taylor Flats 115kV
6 transmission line and underlying easement to Franklin Public Utility
7 District, conditioned on the easement land being free of structures
8 within 15 feet from the center line of the easement. Compl. ¶ 5. As
9 a result of this agreement, letters have been sent to property owners
10 informing of their need to remove any encroachments from the right-of-
11 way and offering to assist in the removal. (Ct. Rec. 11 at 4).

12 On or about April 20, 2007, a letter was sent to Defendants
13 asking them to remove their encroaching fence by June 22, 2007.
14 Compl. ¶ 11. Defendants were offered reimbursement for the costs
15 associated with the removal of the fence. Compl. ¶ 11. Despite
16 multiple follow up letters, Defendants did not respond and have failed
17 to remove their encroachment. Compl. ¶ 16. Defendants are the only
18 property owner within the subdivision to not remove their
19 encroachment. *Id.* Plaintiff accordingly filed an action on June 10,
20 2008, seeking injunctive relief ordering Defendants to remove their
21 fence and requesting reimbursement of the government's costs and
22 attorney fees.

23 A summons was served on Defendants in mid-June 2006. (Ct. Rec.
24 5, 6). On July 25, 2008, Plaintiff moved for the entry of default
25 (Ct. Rec. 4), and the Office of the District Court Executive entered
26 default on August 18, 2008 (Ct. Rec. 9). Plaintiff's August 28, 2008
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1 motion for the entry of default judgment (Ct. Rec. 10) is now before
2 the Court.¹

3 **DISCUSSION**

4 **I. Injunctive Relief**

5 Plaintiff requests an order requiring Defendants to promptly
6 remove completely from Plaintiff's easement the fence located on
7 Plaintiff's easement or, in default of such removal, for authority for
8 Plaintiff to remove the fence and all parts thereof from Plaintiff's
9 easement and to do to any portion of the fence such damage as occurs
10 incidental to the removal of the fence completely from the easement.
11 Compl. at 5.

12 Plaintiff argues that injunctive relief is appropriate in this
13 case because the easement grant is clear and specific that Plaintiff
14 acquired the right to remove structures from its easement, and
15 Defendants' fence is a structure encroaching on Plaintiff's easement.
16 Moreover, Defendants' structure on its easement interferes with BPA's
17 ability to efficiently and safely repair and maintain its power lines.
18 Removing such structures enables Plaintiff to protect homeowners from
19 potentially hazardous situations that may arise. There were a number
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23 ¹Defendants contacted Plaintiff's counsel by telephone on or
24 about August 13, 2008, indicating a desire to discuss the matter.
25 (Ct. Rec. 11-2 ¶ 7). BPA thereafter met with Defendants but were
26 unable to resolve the issue. (Ct. Rec. 11-2 ¶¶ 8-9). On August
27 18, 2008, Defendants sent a letter to counsel for Plaintiff
arguing they had previously received permission to build the
fence at issue. However, Defendants did not indicate an
intention to appear in this case (Ct. Rec. 11-2 ¶ 10) and have
since failed to do so.

1 of fences within this subdivision of property owners and all but one,
2 Defendants' fence, have been removed.

3 The entry of injunctive relief is appropriate for the reasons
4 cited by the Plaintiff. Defendants are ordered to forthwith
5 completely remove the fence located on Plaintiff's easement. If they
6 fail to do so by **no later than October 1, 2008**, Plaintiff may remove
7 the fence and all parts thereof from Plaintiff's easement at
8 Defendants' expense.

9 **II. Costs**

10 This Court's Local Rule 54.1 provides that a party entitled to
11 recover costs must file a bill of costs within 10 days of the entry of
12 judgment. Plaintiff is directed to follow this district's customary
13 procedures in requesting costs; however, Plaintiff must first
14 establish a right to this recovery. Although Plaintiff's complaint
15 seeks reimbursement for costs and attorney fees, Plaintiff has yet to
16 cite authority entitling it to recover its fees and costs. In fact,
17 Plaintiff's motion for default judgment fails to mention the request
18 for fees and costs as asserted in the complaint. Should Plaintiff
19 continue to seek reimbursement for costs and attorney fees, as alleged
20 in the complaint, Plaintiff must first demonstrate it is so entitled
21 by law.

22 Having complied with the requirements of Fed. R. Civ. P. 55 and
23 LR 55.1, Local Rules for the Eastern District of Washington,
24 Plaintiff's motion for default judgment as to Defendants Wyatt Tone
25 and Jill Tone, husband and wife, and the marital community comprised
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1 thereof, (Ct. Rec. 10) is **GRANTED. JUDGMENT IS RENDERED IN FAVOR OF**
2 **PLAINTIFF AND AGAINST DEFENDANTS** as described above. Defendants shall
3 remove the fence located on Plaintiff's easement by **no later than**
4 **October 1, 2008.** If they fail to do so, Plaintiff may remove the
5 fence at Defendants' expense.

6 **IT IS SO ORDERED.** The District Court Executive is directed to
7 enter this Order and forward a copy to counsel for Plaintiff and to
8 Defendants. Judgment shall be entered as described above and the file
9 shall be **CLOSED.**

10 DATED this 16th day of September, 2006.

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12 S/Fred Van Sickle
13 Fred Van Sickle
14 Senior United States District Judge
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